

be requested by the provider of services.

(3) The provisions of part 498 of this chapter apply when the following providers request a hearing on a denial of participation, or certification of non-compliance leading to an enforcement remedy (including termination of the provider agreement), except State monitoring:

- (i) All State-operated facilities;
- (ii) SNFs and dually participating SNF/NFs; and
- (iii) Any other facilities subject to a CMS validation survey or CMS review of the State's findings.

(4) The provisions of part 431 of this chapter apply when a non-State operated Medicaid NF, which has not received a CMS validation survey or CMS review of the State's findings, requests a hearing on the State's denial of participation, termination of provider agreement, or certification of non-compliance leading to an alternative remedy, except State monitoring.

(f) *Provider agreements.* CMS or the Medicaid agency may execute a provider agreement when a prospective provider is in substantial compliance with all the requirements for participation for a SNF or NF, respectively.

(g) *Special rules for Federal validation surveys.* (1) CMS may make independent certifications of a NF's, SNF's, or dually participating facility's non-compliance based on a CMS validation survey.

(2) CMS issues the notice of actions affecting facilities for which CMS did validation surveys.

(3) For non-State-operated NFs and non-State-operated dually participating facilities, any disagreement between CMS and the State regarding the timing and choice of remedies is resolved in accordance with § 488.452.

(4) Either CMS or the survey agency, at CMS's option, may revisit the facility to ensure that corrections are made.

[59 FR 56238, Nov. 10, 1994; 60 FR 50118, Sept. 28, 1995]

EFFECTIVE DATE NOTE: At 76 FR 15126, Mar. 18, 2011, § 488.330 was amended by Revising (e)(2)(ii), effective January 1, 2012. For the convenience of the user is revised text is set forth as follows:

#### § 488.330 Certification of compliance or non-compliance.

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(e) \* \* \*

(2) \* \* \*

(ii) Except for civil money penalties imposed on NFs-only by the State, during any pending hearing that may be requested by the provider of services.

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#### § 488.331 Informal dispute resolution.

(a) *Opportunity to refute survey findings.* (1) For non-Federal surveys, the State must offer a facility an informal opportunity, at the facility's request, to dispute survey findings upon the facility's receipt of the official statement of deficiencies.

(2) For Federal surveys, CMS offers a facility an informal opportunity, at the facility's request, to dispute survey findings upon the facility's receipt of the official statement of deficiencies.

(b)(1) Failure of the State or CMS, as appropriate, to complete informal dispute resolution timely cannot delay the effective date of any enforcement action against the facility.

(2) A facility may not seek a delay of any enforcement action against it on the grounds that informal dispute resolution has not been completed before the effective date of the enforcement action.

(c) If a provider is subsequently successful, during the informal dispute resolution process, at demonstrating that deficiencies should not have been cited, the deficiencies are removed from the statement of deficiencies and any enforcement actions imposed solely as a result of those cited deficiencies are rescinded.

(d) *Notification.* Upon request, CMS does and the State must provide the facility with written notification of the informal dispute resolution process.

EFFECTIVE DATE NOTE: At 76 FR 15126, Mar. 18, 2011, § 488.332 was amended by adding paragraph (a)(3), effective Jan. 1, 2012. For the convenience of the user, the added text is set forth as follows:

#### § 488.331 Informal dispute resolution.

(a) \* \* \*

(3) For SNFs, dually-participating SNF/NFs, and NF-only facilities that have civil

#### § 488.332

money penalties imposed by CMS that will be placed in a CMS escrow account, CMS also offers the facility an opportunity for independent informal dispute resolution, subject to the terms of paragraphs (b), (c), and (d) of this section and of § 488.431. The facility must request independent informal dispute resolution in writing within 10 days of receipt of CMS's offer. However, a facility may not use the dispute resolution processes at both § 488.331 and § 488.431 for the same deficiency citation arising from the same survey unless the informal dispute resolution process at § 488.331 was completed prior to the imposition of the civil money penalty.

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#### § 488.332 Investigation of complaints of violations and monitoring of compliance.

(a) *Investigation of complaints.* (1) The State survey agency must establish procedures and maintain adequate staff to investigate complaints of violations of participation requirements.

(2) The State survey agency takes appropriate precautions to protect a complainant's anonymity and privacy, if possible.

(3) If arrangements have been made with other State components for investigation of complaints, the State must have a means of communicating information among appropriate entities, and the State survey agency retains responsibility for the investigation process.

(4) If, after investigating a complaint, the State has reason to believe that an identifiable individual neglected or abused a resident, or misappropriated a resident's property, the State survey agency must act on the complaint in accordance with § 488.335.

(b) *On-site monitoring.* The State survey agency conducts on-site monitoring on an as necessary basis when—

(1) A facility is not in substantial compliance with the requirements and is in the process of correcting deficiencies;

(2) A facility has corrected deficiencies and verification of continued substantial compliance is needed; or

(3) The survey agency has reason to question the substantial compliance of the facility with a requirement of participation.

(c) *Composition of the investigative team.* A State may use a specialized

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team, which may include an attorney, auditor and appropriate health professionals, to identify, survey, gather and preserve evidence, and administer remedies to noncompliant facilities.

#### § 488.334 Educational programs.

A State must conduct periodic educational programs for the staff and residents (and their representatives) of SNFs and NFs in order to present current regulations, procedures, and policies on the survey, certification and enforcement process under this subpart and subpart F of this part.

#### § 488.335 Action on complaints of resident neglect and abuse, and misappropriation of resident property.

(a) *Investigation.* (1) The State must review all allegations of resident neglect and abuse, and misappropriation of resident property and follow procedures specified in § 488.332.

(2) If there is reason to believe, either through oral or written evidence that an individual used by a facility to provide services to residents could have abused or neglected a resident or misappropriated a resident's property, the State must investigate the allegation.

(3) The State must have written procedures for the timely review and investigation of allegations of resident abuse and neglect, and misappropriation of resident property.

(b) *Source of complaints.* The State must review all allegations regardless of the source.

(c) *Notification.*—(1) *Individuals to be notified.* If the State makes a preliminary determination, based on oral or written evidence and its investigation, that the abuse, neglect or misappropriation of property occurred, it must notify in writing—

(i) The individuals implicated in the investigation; and

(ii) The current administrator of the facility in which the incident occurred.

(2) *Timing of the notice.* The State must notify the individuals specified in paragraph (c)(1) of this section in writing within 10 working days of the State's investigation.

(3) *Contents of the notice.* The notice must include the—

(i) Nature of the allegation(s);

(ii) Date and time of the occurrence;